IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLENE BENTON, President, on Behalf of the EZRA PRENTICE HOMES TENANTS ASSOCIATION; COUNTY OF ALBANY; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; RIVERKEEPER, INC.; SCENIC HUDSON; NATURAL RESOURCES DEFENSE COUNCIL; and CATSKILL MOUNTAINKEEPER, Plaintiffs, v. GLOBAL COMPANIES, LLC, Defendant.	Civ. No. 1:16-CV-125 (GLS/CFH)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

NATURE OF THE PROCEEDING

1. Charlene Benton, President, on behalf of the Ezra Prentice Homes Tenants Association; the County of Albany; Sierra Club; Center for Biological Diversity; Riverkeeper, Inc.; Scenic Hudson; Natural Resources Defense Council; and Catskill Mountainkeeper ("Plaintiffs") bring this action for declaratory and injunctive relief and civil penalties against Global Companies, LLC ("Defendant" or "Global") for violations of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. §§ 7401-7671q, and New York's State Implementation Plan ("SIP") in connection with Global's modification and operation of a petroleum product transloading facility located at 50 Church Street, Albany, New York ("Albany Terminal" or "Terminal"). Plaintiffs

bring this action pursuant to the citizen suit enforcement provisions of the CAA. 42 U.S.C. § 7604.

2. Global's Albany Terminal is classified under the CAA and New York's SIP as a major source of volatile organic compounds ("VOCs"). VOCs react with other compounds to form harmful ground-level ozone, which can cause severe respiratory problems, adverse cardiovascular effects, and premature death. Due to its adverse human health impacts, ozone is a regulated pollutant under the CAA, and the U.S. Environmental Protection Agency ("EPA") has promulgated National Ambient Air Quality Standards ("NAAQS") for ozone.

3. Global's Albany Terminal is located in the Albany-Schenectady-Troy metropolitan statistical area ("MSA"). The Albany-Schenectady-Troy MSA is designated by the New York State Department of Environmental Conservation ("NYSDEC") and EPA as being in "nonattainment" for ozone, meaning that the air quality in the MSA does not meet the NAAQS for that pollutant.

4. The Albany Terminal is located in the heart of Albany's South End, which is home to numerous residences, businesses, schools, churches, and social service agencies and has been designated by NYSDEC as an environmental justice area. NYSDEC defines an environmental justice area, in pertinent part, as "a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations." NYSDEC, Commissioner Policy 29, Environmental Justice and Permitting ("CP-29" or "EJ Policy"), § III.A.8 (March 19, 2003).

5. In order to ensure that new sources of air pollution in a nonattainment area do not exacerbate existing air quality problems or delay achievement of the NAAQS, the CAA imposes additional permitting requirements on new or modified sources that contribute significant

amounts of a pollutant for which the area is in nonattainment. The additional permitting requirements are set forth in the Nonattainment New Source Review ("NNSR") provisions of the Act. 42 U.S.C. §§ 7501-7515.

6. In upstate New York, new or modified major sources in an ozone nonattainment area that will increase emissions of VOCs by 40 tons per year ("tpy") or more annually are required to apply for and obtain an NNSR permit in addition to other permit requirements. *EPA Permit Requirements for Review of New Sources and Modifications*. 40 C.F.R. § 51.165(a)(1)(x)(A); N.Y. Comp. Codes R. & Regs. tit. 6, § 231-13.3. Among other requirements, sources subject to NNSR permit requirements must obtain emission offsets for the pollutant at issue and must implement control technology that meets the Lowest Achievable Emission Rate ("LAER") for that pollutant. 42 U.S.C. § 7503; N.Y. Comp. Codes R. & Regs. tit. 6, subpt. 231-6.

7. In 2011, Global applied to NYSDEC for a major modification to the CAA Title V operating permit for the Albany Terminal to allow a fivefold increase in the receipt, storage, handling, and marine loading of petroleum products at the Terminal ("the 2011 Title V Application").

8. Despite the fact that the fivefold increase in marine throughput of petroleum product at the Albany Terminal resulted in an increase in emissions of VOCs of at least 40 tpy, Global failed to apply for and obtain an NNSR permit, in violation of the CAA and New York's SIP. In addition, Global's continuing operation of the Albany Terminal without implementing LAER for VOCs at the Terminal, and without obtaining VOC emission offsets, is a continuing violation of the CAA and New York's SIP. 42 U.S.C. § 7503; N.Y. Comp. Codes R. & Regs. tit. 6, subpt. 231-6.

9. Global claimed in the 2011 Title V Application that it would handle conventional crude oil that would emit no more than 1.3590 pounds of VOCs per 1,000 gallons during marine loading operations. In response to the 2011 Title V Application, NYSDEC issued a modified Title V operating permit for the Terminal in November 2012 (the "Title V Permit"). The Title V Permit includes throughput limits on crude oil (*i.e.*, caps on the amount of crude oil that can be handled) that were based on Global's representations concerning the VOC emissions from the crude oil that would be received, stored, handled, and marine loaded at the Albany Terminal.

10. However, soon after NYSDEC's issuance of the Title V Permit, Global began to receive and marine load large volumes of crude oil from the Bakken region of North Dakota. Bakken crude oil is more volatile than conventional crude oil and emits more VOCs than conventional crude oil. In particular, Bakken crude oil generally emits more than 1.3590 pounds of VOCs per 1,000 gallons during marine loading.

11. Because the Title V Permit authorizes only handling of conventional crude oil that emits no more than 1.3590 pounds of VOCs per 1,000 gallons during marine loading, Global's receipt, storage, handling, and marine loading of Bakken crude oil at the Terminal constitutes a continuing violation of the Title V Permit and results in higher emissions of VOCs from the Terminal than is authorized by the Permit.

12. Global's violations of the CAA and New York's SIP have resulted in excess emissions of VOCs from the Albany Terminal that are likely to adversely affect the health of residents of Albany's South End and the Albany-Schenectady-Troy MSA, and delay achievement of the ozone NAAQS in the Albany-Schenectady-Troy MSA.

13. Plaintiffs seek (i) a declaratory judgment that Global violated the CAA and New York's SIP by commencing construction of a major modification resulting in a fivefold increase

in marine loading of petroleum product at the Albany Terminal without first applying for and obtaining an NNSR permit; (ii) a mandatory injunction compelling Global to apply for an NNSR permit by a date certain; (iii) a declaratory judgment that Global has violated and continues to violate the CAA and New York's SIP by operating the Albany Terminal without implementing LAER for VOCs and without obtaining VOC emission offsets; (iv) a declaratory judgment that Global has violated and continues to violate the Title V Permit by receiving, storing, handling, and marine loading Bakken crude oil at the Terminal that has a VOC emission factor greater than allowed by the Permit; (iv) injunctive relief prohibiting Global from receiving, storing, handling, and marine loading Bakken crude oil at the Terminal that has a VOC emission factor greater than allowed by the Title V Permit; (v) judgment against Global for civil penalties of $37,500 for each day it has operated the Albany Terminal in violation of the CAA; and (vi) judgment awarding Plaintiffs the costs of litigation, including reasonable attorneys' and expert witness fees.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 2201-2202.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 7604(c)(1) because a substantial part of the events or omissions giving rise to the claims herein occurred in the Northern District of New York; because the Albany Terminal is located there; and because Defendant conducts business there.

16. By letter dated October 5, 2015, Plaintiffs provided written notification to Global of the violations cited herein and of their intent to commence this suit if those violations were not cured within sixty days. Copies of the written notification were contemporaneously provided to the EPA Administrator, the Regional Administrator of EPA Region 2, the Governor of New

York, and the Commissioner of NYSDEC as required by the CAA. 42 U.S.C. § 7604(b)(1)(A). More than sixty days have passed since Global's receipt of the written notification, and the violations cited in the notice have not been cured and are continuing. Neither EPA nor NYSDEC has commenced and is diligently prosecuting a court action to address the violations cited herein.

PARTIES

17. Plaintiff Ezra Prentice Homes Tenants Association (the "Association") is an unincorporated association with approximately 100 members. The Association's mission is to represent the interests of the tenants of the Ezra Prentice Homes, particularly with respect to matters affecting their health, safety, and welfare. Ezra Prentice is a public housing development owned and operated by the Albany Housing Authority and consists of 176 apartment units, all of which are currently occupied. Ezra Prentice is home to over 400 residents, including more than 200 children, and is located directly adjacent to the Albany Terminal. The Ezra Prentice Homes are located in the Albany-Schenectady-Troy MSA.

18. Plaintiff County of Albany is a municipal corporation organized and existing under the laws of the State of New York. The entirety of Albany County lies within the Albany-Schenectady-Troy MSA. According to the 2010 United States Census, over 300,000 people reside in Albany County.

19. Plaintiff Sierra Club ("Sierra Club") is a national not-for-profit organization with 64 chapters and over 625,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out those objectives. The Atlantic Chapter of Sierra Club has approximately 38,000 members in the State of New York.

Its offices are located at 353 Hamilton Street, Albany, New York. Sierra Club is actively engaged in working to protect the health and well-being of the communities in the City of Albany and the Hudson River Valley. Sierra Club's members regularly enjoy recreational activities on the Hudson River and other waterways in the vicinity of the Albany Terminal, and in Island Creek Park, which is located on the Hudson River adjacent to the Albany Terminal. Sierra Club brings this proceeding on its own behalf, as well as on behalf of its members who live, work, and recreate in the Albany-Schenectady-Troy MSA.

20. Plaintiff Center for Biological Diversity ("CBD") is a 501(c)(3) not-for-profit organization with over 900,000 members and online activists. CBD's members are dedicated to protecting diverse native species and habitats through science, policy, education, and environmental law. CBD's members derive recreational, conservation, and aesthetic benefits from the existence of rare species in the wild, including species inhabiting the Hudson River and lands and waters in the Albany-Schenectady-Troy MSA. CBD brings this proceeding on its own behalf, as well as on behalf of its members who live, work, and recreate in the Albany-Schenectady-Troy MSA.

21. Plaintiff Riverkeeper, Inc. ("Riverkeeper") is a 501(c)(3) not-for-profit corporation with offices located at 20 Secor Road, Ossining, New York. Riverkeeper is a member-supported watchdog organization with approximately 4,000 active members, many of whom reside in the Hudson Valley, including within the City of Albany. Riverkeeper is dedicated to defending the Hudson River and its watershed and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 44 years, Riverkeeper has stopped polluters, championed public access to the river, influenced land use decisions, and restored habitat, benefiting the natural and human communities of the Hudson

River and its watershed. Riverkeeper brings this proceeding on its own behalf, as well as on behalf of its members who live, work, and recreate in the Albany-Schenectady-Troy MSA.

22. Plaintiff Scenic Hudson is a 501(c)(3) not-for-profit organization headquartered at One Civic Center Plaza, Suite 200, Poughkeepsie, New York. Scenic Hudson works to protect and restore the Hudson River and its majestic landscape as an irreplaceable national treasure and a vital resource for residents and visitors. Scenic Hudson combines land acquisition, support for agriculture, citizen-based advocacy, and sophisticated planning tools to create environmentally healthy communities, champion smart economic growth, open up riverfronts to the public, and preserve the Hudson River Valley's inspiring beauty and natural resources. Scenic Hudson brings this proceeding on its own behalf, as well as on behalf of its members who live, work, and recreate in the Albany-Schenectady-Troy MSA.

23. Plaintiff Natural Resources Defense Council ("NRDC") is a 501(c)(3) not-for-profit organization headquartered at 40 West 20th Street, New York, New York. NRDC's purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC is a member-supported organization with over 2 million members and online activists that fights for the planet and its people in communities across the country and nations around the globe. Further, as a New York-based organization, NRDC has long advocated for New Yorkers' rights to clean air and clean water, and fought to shield the state's communities from the environmental harms posed by big polluters. NRDC brings this proceeding on its own behalf, as well as on behalf of its more than 30,000 members in New York, many of whom live, work, and recreate in the Albany-Schenectady-Troy MSA.

24. Plaintiff Catskill Mountainkeeper is a 501(c)(3) not-for-profit organization located in Livingston Manor, New York. Catskill Mountainkeeper is dedicated to protecting and

preserving the unique and irreplaceable Catskill Region of New York State, and represents the residents of seven counties in New York State (Albany, Delaware, Greene, Otsego, Schoharie, Sullivan, and Ulster) as well as the Upper Delaware and Susquehanna River basins. Working with a network of concerned citizens, Catskill Mountainkeeper's programs protect the irreplaceable natural heritage of New York and promote sustainable development to support and empower New York communities. Catskill Mountainkeeper brings this proceeding on its own behalf, as well as on behalf of its members who live, work, and recreate in the Albany-Schenectady-Troy MSA.

25. Plaintiffs have representational standing to bring this action. Plaintiffs' members, staff, and volunteers live, work, recreate, and own property in the region affected by VOC emissions from the Albany Terminal. Defendant's violations of the CAA and New York's SIP have adversely impacted Plaintiffs and Plaintiffs' members' health and ability to use and enjoy areas in New York near the Albany Terminal and within the Albany-Schenectady-Troy MSA, and have injured and will injure the health, economic, recreational, environmental, aesthetic, and/or other interests of Plaintiffs and their members. These injuries are reasonably traceable to Defendant's violations and capable of redress by action of this Court. Absent the relief requested herein, Defendant's violations of the CAA and New York's SIP will continue to harm these interests.

26. Plaintiffs have organizational standing to bring this action. Defendant's failure to apply for and obtain an NNSR permit for the Albany Terminal, failure to implement LAER for its VOC emission sources, failure to obtain VOC emission offsets, and failure to comply with its Title V permit, as required by the CAA and the New York SIP, have adversely affected Plaintiffs' members and will continue to adversely affect Plaintiffs' members by causing a

deterioration of air quality and delaying achievement of the ozone NAAQS in the Albany-Schenectady-Troy MSA. These injuries are fairly traceable to Defendant's violations and are redressable by this Court.

27. Defendant Global is, upon information and belief, incorporated in the State of Delaware and registered with the New York State Department of State. Global owns and operates the Albany Terminal.

I. OVERVIEW OF THE CLEAN AIR ACT

28. The CAA was enacted to, among other things, "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

29. The Act directs EPA to establish NAAQS for certain harmful air pollutants to protect human health and the environment. 42 U.S.C. § 7409. EPA has established NAAQS for several pollutants, including ozone. 40 C.F.R. pt. 50. Because they are major contributors to the formation of ozone, VOCs are regulated under the Act. *Id.* §§ 51.165(a)(1)(x)(A), 51.165(a)(1)(xxxvii)(C)(1).

30. Ozone causes adverse health effects in humans, including breathing constriction and lung damage in healthy individuals and aggravation of respiratory diseases such as asthma, emphysema, and bronchitis. Ground level ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue. Ozone has also been linked to cardiovascular problems and premature death.

31. Pursuant to the Act, a geographic region of a state is designated as a "nonattainment area" when the ambient air quality in that region does not meet the NAAQS for a particular pollutant. 42 U.S.C. § 7407(d). Regions that meet the NAAQS for a pollutant are deemed to be in "attainment" for that pollutant. *Id.*

32. Each State is required under the Act to adopt and submit to EPA for approval a SIP that specifies measures to ensure the attainment, maintenance, and enforcement of the NAAQS. 42 U.S.C. § 7410.

33. The CAA does not prohibit the construction of new or modified major sources of an air pollutant for which a region is designated as being in nonattainment. However, such new or modified sources must apply for and obtain an NNSR permit prior to commencement of construction. 42 U.S.C. §§ 7502(c)(5), 7511a(a)(2)(C).

34. The Act defines "construction" to include "the modification . . . of any source or facility." *Id.* § 7479(2)(C). The Act defines "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." *Id.* §§ 7501(4), 7411(a)(4).

35. A stationary source that is located within an Ozone Transport Region is a "major" source for ozone if it has the potential to emit 50 tpy or more of VOCs. 40 C.F.R. § 51.165(a)(1)(iv)(A)(1)(ii). All of New York State is located within an Ozone Transport Region. 42 U.S.C. § 7511c(a).

36. Under EPA regulations, NNSR permitting requirements apply both to new major stationary sources and to modifications of an existing major stationary source if the modification is itself "major" for the particular pollutant for which the area is in nonattainment. 40 C.F.R. § 51.165(a)(2)(i). A modification is a "major modification" for ozone if it results in a net increase in the source's potential to emit VOCs of 40 tpy or more. *Id*. §§ 51.165(a)(1)(v)(A), 51.165(a)(1)(x)(A).

37. A source's "potential to emit" is the maximum capacity of the source to emit a pollutant under its physical and operational design, taking into account federally enforceable physical and operational limitations. 40 C.F.R. § 51.165(a)(1)(iii).

38. A stationary source subject to NNSR permit requirements must implement LAER technology and purchase emission offsets, where necessary. 42 U.S.C. §§ 7503(a), (c). The Act defines LAER as the "most stringent emission limitation." *Id.* § 7501(3); 40 C.F.R. § 51.165(a)(1)(xiii).

39. New York's SIP includes the Act's NNSR permit requirements. N.Y. Comp. Codes R. & Regs. tit. 6, subpt. 231-6.

40. The CAA requires a major source to have an operating permit, commonly known as a "Title V permit" after the subchapter of the Act requiring the permit. 42 U.S.C. § 7661a(a).

41. The Act's requirement for a major source to obtain and operate in compliance with a Title V permit is separate from and independent of the Act's NNSR permit requirements.

42. It is unlawful for any person to violate any condition or requirement of a Title V permit. *Id.*

43. The CAA includes a citizen suit provision that authorizes any person to commence a civil enforcement action against any party "who proposes to construct or constructs any new or modified major emitting facility without a permit required under . . . part D of subchapter I of [the Act] (relating to [NNSR permits])." *Id.* § 7604(a)(3).

44. In addition, any person may commence a civil enforcement action under the Act against any party "who is alleged to have violated . . . or to be in violation of . . . an emission standard or limitation under [the Act]." *Id.* § 7604(a)(1). An "emission standard or limitation" includes "any . . . standard, limitation, or schedule established under any permit issued pursuant

to [Title] V of [the Act] or under any applicable State implementation plan approved by the [EPA] Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations." *Id.* § 7604(f)(4).

II. THE ALBANY TERMINAL

45. The Albany Terminal is a petroleum product transloading facility where petroleum products are received by rail, stored in tanks, and then transloaded to barges for transport down the Hudson River.

46. The Albany Terminal is located in the Albany-Schenectady-Troy MSA, which has been designated by NYSDEC as a nonattainment area for the 8-hour ozone NAAQS. The Albany-Schenectady-Troy MSA includes Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie counties in New York State.

47. The Albany Terminal is located in the heart of Albany's South End, which is home to residences, businesses, schools, churches, and social service agencies.

48. The Ezra Prentice Homes are located directly adjacent to, and abuts, the western portion of the Albany Terminal. Approximately one-half (85) of the Ezra Prentice apartments are located within 20-100 feet of the Terminal's rail yard, and all 176 Ezra Prentice housing units are in close proximity to the Terminal. The Ezra Prentice Homes include a playground, located within 20 feet of the Terminal's rail yard, where children from the housing development play on a regular basis. Approximately 400 people reside at Ezra Prentice, including over 200 children.

49. In addition to the Ezra Prentice Homes, numerous other residences, businesses, health care facilities, parks, and institutions in Albany's South End are in close proximity to the Albany Terminal, including the Picotte Center for Disability Services; the Mount Hope residential community and playground; the Albany Community Charter School; Krank Park; the Steamboat Square Apartments and Townhouses (361 residential units); the Giffen Memorial

Elementary School; the Albany County Health Department; Centro Civico Hispano Americano; the "2 Together" Children's Tutoring Center; St. Peter's Family Health Center; and Island Creek Park. There also are a number of churches, agency offices, and community gathering places in close proximity to the Albany Terminal, including the Department of Motor Vehicles, St. Francis Catholic Church, the Evangelical Protestant Church, Mt. Zion Baptist Church, Reigning Life Family Church, the Salvation Army Center for Adult Rehabilitation and Disaster Relief, and the Capital City Rescue Mission.

50. The offloading, storage, handling, and transloading of petroleum products at the Albany Terminal results in emissions of VOCs and other pollutants, including but not limited to nitrogen oxide, particulate matter, carbon monoxide, and greenhouse gases. VOCs and other air pollutants are emitted from the offloading of rail cars; the filling of storage tanks; the storage of petroleum products in tanks; the transloading of petroleum products to trucks and marine vessels; and from fugitive emission sources at the Terminal, such as valves, flanges, hose couplings, and other devices.

51. The Albany Terminal is classified as a major source of VOCs because it has the potential to emit 50 tpy or more of VOCs and is located in an Ozone Transport Region.

52. Apart from being a precursor to the formation of ozone, VOCs cause a variety of adverse human health effects. VOCs released from crude oil operations at the Albany Terminal include benzene, methane, toluene, and xylene. Breathing these VOCs can cause headaches; dizziness; eye, nose, and throat irritation; visual disorders; memory problems; fatigue; and nosebleeds.

53. While all VOCs exhibit some toxicity, benzene is of particular concern because it is a known human carcinogen. Chronic exposure to benzene increases the risk of leukemia, even

at low levels of exposure. Benzene exposure increases the risk of birth defects. Respiratory effects of benzene exposure can include pulmonary edema, acute granular tracheitis, laryngitis, and bronchitis. Benzene can remain in the air for several days once it is released. Children are especially susceptible to adverse health effects from exposure to benzene.

III. THE 2012 MAJOR MODIFICATION TO THE ALBANY TERMINAL

54. On or about November 14, 2011, Global submitted the 2011 Title V Application to NYSDEC to modify the Albany Terminal to accommodate a fivefold increase in the marine throughput of petroleum products at the Albany Terminal, from 450 million gallons annually to 2.3 billion gallons annually.

55. By letter dated December 14, 2011, NYSDEC informed Global that the requested permit modification constituted a major modification of the Albany Terminal under the CAA and New York's SIP.

56. In the same letter, NYSDEC informed Defendant that the Albany Terminal was located within an environmental justice area and that Global was therefore required to comply with NYSDEC's EJ Policy as part of the permit application process.

57. The EJ Policy was issued to address "the lack of meaningful public participation by minority or low-income communities in the permit process; the unavailability or inaccessibility of certain information to the public early in the permit process; and the failure of the permit process to address disproportionate adverse environmental impacts on minority and low-income communities." CP-29 § II.

58. The centerpiece of CP-29 is its requirement for enhanced public participation for actions potentially affecting an environmental justice community. Specifically, the EJ Policy requires that an applicant for a proposed project that may affect an environmental justice area prepare and submit to NYSDEC a written public participation plan as part of its application. *Id.*

§ V.D.1. The public participation plan must, at a minimum, identify stakeholders, including nearby residents, local elected officials, community-based organizations, and community residents; provide for distribution and posting of written information about the proposed action and the permit review process; provide for public information meetings to keep the public informed about the proposed action and the permit review process; and provide for the establishment of easily-accessible document repositories in or near the potential environmental justice area to make available pertinent information. *Id.*

59. Despite having received notification from NYSDEC that the Albany Terminal is located in an environmental justice area, Global failed to comply with the enhanced public notice and public participation requirements of the EJ Policy in connection with its 2011 Title V Application.

60. As a result of Defendant's failure to comply with the requirements of the EJ Policy, residents of the environmental justice area affected by Global's 2011 Title V Application, including but not limited to members of plaintiff Ezra Prentice Homes Tenants Association, did not receive effective notice of the proposed modification and were deprived of the opportunity to evaluate and provide comments on the proposed major modification to the Albany Terminal.

61. In the 2011 Title V Application, as revised on or about June 5, 2012, Global represented that the crude oil to be received, stored, handled, and marine loaded at the Albany Terminal would be conventional crude oil with a VOC emission factor not exceeding 1.3590 pounds of VOCs per 1,000 gallons loaded.

62. In the 2011 Title V Application, Global claimed that the net increase in the potential to emit VOCs from the proposed major modification would be less than 40 tpy.

63. On or about November 7, 2012, NYSDEC issued the Title V Permit.

64. Defendant subsequently undertook a major modification of the Albany Terminal to accommodate a fivefold increase in marine throughput of petroleum product at the Terminal, including reconfiguring the rail yard serving to Terminal to facilitate off-loading of crude oil; constructing secondary containment, pumps, and piping; installing a vapor recovery unit at the marine loading dock; and completing other operational modifications (together, the "Major Modification").

65. The increase in petroleum product throughput associated with the Major Modification constituted both a change in the method of operation and a physical change to the Albany Terminal which increased the amount of VOCs emitted by the Terminal.

66. Contrary to Global's claim in the 2011 Title V Application, the Major Modification resulted in a net increase in the Terminal's potential to emit VOCs of 40 tpy or more, thereby triggering the requirement that Global apply for and obtain an NNSR permit prior to commencing construction of the Major Modification.

67. Defendant failed to apply for and obtain an NNSR permit for the Major Modification.

68. Defendant has failed to install and employ LAER technology for VOCs and has failed to obtain VOC emission offsets.

69. The Title V Permit specifies the federally-enforceable operating requirements that apply to the Albany Terminal, including the federally-enforceable requirements of New York's SIP.

70. The Title V Permit imposes a number of restrictions on the petroleum product operations at the Albany Terminal for the purpose of capping VOC emissions from those operations.

71. For example, the Title V Permit authorizes total marine loading throughput at the Terminal of 2.3 billion gallons annually, of which 1.85 billion gallons (80%) is authorized to be crude oil. The Title V Permit utilizes throughput restrictions to limit VOC emissions because those emissions are largely determined by the amount of petroleum product that is offloaded, stored, handled, and transloaded at the Albany Terminal.

72. The crude oil throughput limits in the Title V Permit are based on, among other things, Defendant's representations to NYSDEC in its 2011 Title V Application, as revised on or about June 5, 2012, that it would handle conventional crude oil with an emission factor no greater than 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading. The Title V Permit incorporates those representations and includes them as terms and conditions of the Permit.

73. Upon information and belief, crude oil comprises the majority of petroleum products handled at the Albany Terminal.

74. Since 2012 and continuing to the present, Global has routinely received, stored, handled, and marine loaded Bakken crude oil at the Albany Terminal.

75. Upon information and belief, the majority of crude oil handled at the Albany Terminal since issuance of the Title V Permit has been Bakken crude oil with an emission factor greater than 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading.

FIRST CAUSE OF ACTION
(Construction of a Major Modification of a Major Source of VOCs Without an NNSR Permit)

76. Plaintiffs hereby reallege and incorporate by reference all allegations contained in the preceding paragraphs.

77. Defendant's construction of the Major Modification resulted in a net increase in potential to emit VOCs of 40 tpy or more.

78. Defendant was therefore required under the CAA and New York's SIP to apply for and obtain an NNSR permit prior to commencing construction of the Major Modification.

79. Defendant failed to apply for and obtain an NNSR permit prior to commencing construction of the Major Modification to the Albany Terminal in violation of the CAA and New York's SIP. 42 U.S.C. §§ 7502(a)(5), 7503, 7604(f)(4); N.Y. Comp. Codes R. & Regs. tit. 6, § 231-6.1(c).

SECOND CAUSE OF ACTION
(Operating a Modified Major Source of VOCs Without Implementing LAER and Obtaining Offsets)

80. Plaintiffs hereby reallege and incorporate by reference all allegations contained in the preceding paragraphs.

81. Because the Major Modification was subject to NNSR requirements, Defendant was required to implement LAER for VOCs at the Albany Terminal and to obtain VOC emission offsets as required by the CAA and New York's SIP.

82. Since construction of the Major Modification, Defendant has operated the Albany Terminal without implementing LAER for VOCs and without obtaining VOC emission offsets.

83. Defendant's operation of the Albany Terminal without implementing LAER for VOCs and without obtaining VOC emission offsets violates the CAA and New York's SIP. 42 U.S.C. §§ 7503(a)(2), 7503(c), 7604(f)(4); N.Y. Comp. Codes R. & Regs. tit. 6, §§ 231-6.5(a), 231-6.6(a).

THIRD CAUSE OF ACTION
(Handling Bakken Crude Oil in Violation of the Title V Permit)

84. Plaintiffs hereby reallege and incorporate by reference all allegations contained in the preceding paragraphs.

85. The Title V Permit contains a federally-enforceable throughput limitation under which the Albany Terminal may not receive, store, handle, or marine load crude oil with an emission factor that exceeds 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading.

86. Since issuance of the Title V Permit, Defendant has received, stored, handled, and marine loaded and continues to receive, store, handle, and marine load Bakken crude oil at the Albany Terminal.

87. Bakken crude oil generally has an emission factor greater than 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading.

88. Defendant's past and continuing receipt, storage, handling, and marine loading of Bakken crude oil with a VOC emission factor exceeding 1.3590 pounds per 1,000 gallons constitutes a violation of an emission standard or limitation under the CAA and New York's SIP. 42 U.S.C. §§ 7604(f)(4), 7661a(a); N.Y. Comp. Codes R. & Regs. tit. 6, §§ 201-6.4(a)(2), 201-7.1(i).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendant as follows:

1. A declaratory judgment that Defendant violated the CAA and New York's SIP by commencing construction of the Major Modification without first applying for and obtaining an NNSR permit;
2. A mandatory injunction enjoining Defendant to apply to NYSDEC for an NNSR permit by a date certain;
3. A declaratory judgment that Defendant violated and continues to violate the CAA and New York's SIP by operating the Albany Terminal without implementing LAER for VOCs and without obtaining VOC emission offsets;
4. A declaratory judgment that Defendant violated and continues to violate its Title V Permit by receiving, storing, handling, and marine loading Bakken crude oil at the Albany Terminal with a VOC emission factor greater than 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading;
5. A permanent injunction enjoining Defendant from receiving, storing, handling, or marine loading crude oil at the Albany Terminal with a VOC emission factor greater than 1.3590 pounds of VOCs per 1,000 gallons handled during marine loading;
6. Judgment against Defendant for civil penalties of $37,500 per day for each day it has operated the Albany Terminal in violation of the CAA and/or New York's SIP, and allocating an appropriate portion of the penalty amount to be used for beneficial mitigation projects to enhance public health and the environment pursuant to 42 U.S.C. § 7604(g)(2);
7. Judgment awarding Plaintiffs their reasonable attorneys' and expert witness fees and costs pursuant to 42 U.S.C. § 7604(d); and
8. For such other and further relief as the Court deems just and equitable.

Dated: February 3, 2016
New York, New York

/s/Christopher Amato

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Christopher Amato (Bar Roll #510258)
Moneen Nasmith (motion for *pro hac vice* admission pending)
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